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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,883	12/07/2005	Achim Kraus	022862-1051-00	2902
23409 7590 10/27/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
MAIL DATE		DELIVERY MODE		
10/27/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,883

Applicant(s)

KRAUS ET AL.

Examiner

Gary K. Graham

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-12,14-16 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-12,14-16 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 August 2010 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6-12, 14-16 and 19-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer (WO patent 02/076797).

Zimmer discloses the invention as is claimed, including a wiper device (14, figs.1,2) for a motor vehicle. The device has a tube (36) for receiving a shaft (16). The tube is attached to a holding element (26b) and to a stub (26a) via numerous bridges (clearly shown in figure 2 but not individually numbered). The connecting bridges, especially when in combination with portion (38) appear to be formed as elbow levers, at least as far as defined.

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The foremost portion (38) forms the elbow connected to the tube (36) which joins generally linear portions that extend therefrom at what appears as an obtuse angle (see figs.2,4a). The device (14) appears to be arranged as a "lever arm design", at least as far as such is understood and as far as such defines any particular structure. The holding element is adapted to be connected to a vehicle body and the stub is adapted to be connected to a mounting tube (12).

With respect to claims 1, 7 and 16, setting forth that the tube is "molded" does not define any particular structure for the tube, at least none that distinguishes from Zimmer. Such at most relates to the method of making the tube and does not appear to impart any particular structure to the tube. Also, it appears that the connecting bridges will tear, or at least be able to tear, upon application of sufficient force. Note that no particular impact force has been established at which the bridges are designed to fail. Also, it appears that some of the bridges are formed such that one will tear before another. Such sequential tearing is established by applicant's specification as a result of different cross-sections of the bridges, where smaller cross-sections will tear before larger ones. In the numerous bridges disclosed by Zimmer, there are some with smaller cross-sections than others (see figure 2). As such, it appears the smaller bridges will tear first in like manner as applicant's do. As the structure of Zimmer appears to meet the structural limitations set forth in the claims, it appears it will inherently perform or function in the same manner to break or tear upon application of sufficient force. As such, the bridges are also considered to have predetermined breaking points.

With respect to claims 4, 12 and 19, as all the bridges appear to be shaped differently, they would appear to have different cross-sections.

Claims 1, 3-4, 6-12, 14-16 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohashi et al (US patent application publication 2001/0011831).

Ohashi discloses the invention as is claimed, including a wiper device (3, figs.1-5) for a motor vehicle. The device has a tube (3b) for receiving a shaft (2). The tube is attached to a holding element (3d) and to a stub (3e) via numerous bridges (some labeled 4a,4b,4c and some not labeled but clearly shown). The connecting bridges appear to be formed as elbow levers, at least as far as defined. The device (3) appears to be arranged as a "lever arm design", at least as far as such is understood and as far as such defines any particular structure. The holding element is adapted to be connected to a vehicle body and the stub is adapted to be connected to a mounting tube (55).

With respect to claims 1, 7 and 16, setting forth that the tube is "molded" does not define any particular structure for the tube, at least none that distinguishes from Ohashi. Such at most relates to the method of making the tube and does not appear to impart any particular structure to the tube. Also, it appears that all the connecting bridges will tear, or at least be able to tear, upon application of sufficient force. Note that some bridges (4a-4c) are specifically designed to fail upon sufficient force application. Note that no particular impact force has been established at which the bridges are designed to fail. Also, it appears that some of the bridges are formed such that one will tear before another. Such sequential tearing is established by applicant's specification as a result of different cross-sections of the bridges, where smaller cross-sections will tear before larger ones. In the numerous bridges disclosed by Ohashi, there are some with smaller cross-sections (4b,4c) than others (4a). As such, it appears the smaller bridges will tear first in like manner as applicant's do. As the structure of Ohashi appears to meet the structural limitations set forth in the claims, it appears it will inherently perform or function in the same manner to break or tear upon

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application of sufficient force. As such, all the bridges are also considered to have predetermined breaking points.

With respect to claims 4, 12 and 19, as all the bridges appear to be shaped differently, they would appear to have different cross-sections.

Response to Arguments

Applicant's arguments filed 18 August 2010 have been fully considered but they are not persuasive.

Applicant's argument that neither Zimmer of Ohashi suggest the connecting bridges arranged like or formed as elbow levers is noted but not persuasive. Applicant sets forth that the term "elbow lever" must be interpreted in light of Applicant's specification and drawings. While such is true, it is noted that applicant's written description offers little insight as to the construction of the elbow levers, essentially letting the term stand on its own. As such, both Zimmer and Ohashi are considered to broadly define such elbow levers and clearly define bridges that are arranged "like" elbow levers. Note that the use of such terminology as "like" allows for great latitude in the interpretation of the structure.

With respect to claims 21 and 22, Zimmer shows structure (38) which reasonably appears as an elbow or joining structure which itself is joined to the tube (36) and joins generally linear portions (not numbered but shown).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727